WILTSHIRE & GRANNIS LLP

April 22, 2013

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51; *Telecommunications Relay Service and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123

Dear Ms. Dortch:

Sorenson Communications, Inc. ("Sorenson") files this letter in response to ex parte presentations by CSDVRS, LLC and two other VRS providers (collectively "ZVRS et al.")[1] and Purple Communications, Inc. ("Purple").[2] Both ZVRS et al. and Purple once again ask the Commission to set VRS rates to subsidize competitors rather than competition, contrary to the policies the Commission has adopted with respect to its universal service programs. Both would, in fact, seek to increase the extent to which the Commission would be subsidizing specific competitors. As the Commission made clear in the *Further Notice of Proposed Rulemaking* leading to the order currently under consideration, tiers to support subscale competitors are wasteful, incenting providers to stay small rather than to grow, and should be phased out, not expanded. Moreover, these proposals once again point out the irrationality of determining compensation on a provider-specific rate-of-return basis—a form of regulation that the Commission has eschewed in nearly every other setting—which incents providers to keep costs high rather than to reduce operating costs. As Sorenson has previously argued, the Commission should strive to establish rates that emulate a competitive market—which would neither produce pro-competitor (but not pro-competition) rate tiers nor set rates based on a rate-of-return

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1 *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service,* Letter from Joint Providers, CG Docket Nos. 10-51 & 03-123 (filed April 19, 2013) ("ZVRS et. al. Letter").

2 *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service,* Comments of Purple Communications, Inc., CG Docket Nos. 10-51 & 03-123 (filed April 16, 2013).

methodology (particularly one that ignores many costs and provides no margin on expenses, as the long-dormant VRS rate-of-return methodology would do).

That Purple and ZVRS are the proponents of continuing tiers points out their core irrationality: both of these companies pre-date Sorenson as participants in providing VRS service, yet they continue to seek special protection. Importantly, neither Purple nor ZVRS et al. squares their proposals with the Commission's clear statements that rate tiers must be eliminated. Neither Purple nor ZVRS et al. offer credible arguments for the continuation of rate tiers. And neither Purple nor ZVRS et al. can overcome the substantial evidence that the use of rate tiers is wasteful, illogical, and inappropriate to use in a rate-of-return compensation regime.

Notably, when the Commission was considering reforms to its high cost universal service program, it determined that it would only support one network in areas that were so costly that, in the absence of support, no networks would be built. The Commission decided against subsidizing competition in these areas, notwithstanding the public benefits that ordinarily flow from market competition.[3] Similarly, in none of the Commission's universal service support mechanisms does the Commission pay more to a less efficient, higher cost provider than it pays to a competing more efficient, lower cost provider. It is only with respect to VRS that the Commission has created support tiers that are designed to prop up high price providers in the face of lower priced alternatives to provide the same minutes for the same customer.

- **The Commission has already determined that tiers are inefficient and must be eliminated.**

    - The Commission found that if all VRS minutes were compensated at the lowest *current* per-minute rate the TRS Fund would save over $ 24 million dollars a year—a reduction of approximately 5%.[4]

    - The Commission concluded that "the tiered rate structure supports an unnecessarily inefficient market structure, and apparently provides insufficient incentive for VRS providers to achieve minimal [sic] efficient scale."[5]

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3 *See e.g. Connect American Fund, A National Broadband Plan for our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing a Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and LinkUp, Universal Service Reform—Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17,663, 17,780 ¶ 319 (rel. Nov. 18, 2011).

4 *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service,* Further Notice of Proposed Rulemaking, 26 FCC Rcd.17,367, 17,383 ¶ 24 (rel. Dec. 15, 2011) ("VRS Reform FNPRM").

5 *Id*. ¶ 141.

- The Commissions determined that the tiers add complexity to the management of the VRS program and exacerbate the stresses on the Fund by having to "provide seemingly indefinite support for subscale providers."[6]

- These criticisms are not answered by, as Purple and ZVRS et al. do, concocting a tiered rate structure that simply lowers the rate for the highest volume tier. The efficient result that a marketplace would demand is that all providers meet that rate. Furthermore, by creating a broader gap between the low volume tier and the higher volume tier, Purple and ZVRS et al. would be adding to the disincentive to grow or consolidate smaller, subscale providers into a larger, at-scale provider.

- **Purple and the ZVRS et al. offer anemic and unfounded justifications for the continuation of tiers.**

  - Although unstated, ZVRS et al.'s strongest justification for the continuation of tiers is that the tier structure has propped up inefficient providers. Those providers now fear they will no longer be able to compete for VRS customers without hand-outs from the VRS Fund.

  - ZVRS et al's tired arguments regarding economies of scale have been repeatedly refuted by leading experts who note that the advantages of scale in VRS are minimal.[7]

  - ZVRS et al.'s argument that they require additional time to phase down to a unitary rate ignores the six years inefficient providers have already been given to become more efficient.[8] With the additional three years to phase down to a unitary rate the ZVRS et al. will have been given nine years to offer service as efficiently as Tier III providers. What is more, tiers were largely put in place to help "new" providers obtain scale[9]—a designation neither ZVRS et al. nor Purple, can reasonably claim. This is especially true for ZVRS and Purple, who are the oldest providers of VRS services.

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6 *Id*. ¶ 64.

7 *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service*, Comments of Sorenson Communications, Inc., CG Docket Nos. 10-51 & 03-123 (filed Mar. 9, 2012) attached Declaration of Dr. Michael L. Katz ¶ 2 ("Katz Declaration").

8 *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service*, Report and Order and Declaratory Ruling, 22 FCC Rcd. 20,140, 20163 ¶ 53 (rel. Nov. 19, 2007) ("2007 TRS Rate Methodology Order").

9 *Id*. ("We therefore believe that using three tiers is appropriate to ensure both that, in furtherance of promoting competition, the newer providers will cover their costs, and the larger and more established providers are not over compensated due to economies of scale.").

- The ZVRS et al.'s concern that the Commission may simultaneously adopt new regulations while eliminating tiers may actually counsel in favor of a phase-down to a unitary rate. ZVRS et. al. argue that the Commission should delay (potentially indefinitely) any phase-down because the new regulations will be burdensome and make it more difficult for inefficient providers to compete.[10] It is Sorenson's understanding, however, that some of the new regulations under consideration will make it *easier* for small providers to increase efficiency by standardizing certain processes in an optional third-party. Thus, the new regulations may well provide a quicker path for the ZVRS et. al. than the one current Tier III providers traversed.

- **Rate tiers are wasteful, illogical, and are the height of intellectual bankruptcy when used in conjunction with rate-of-return regulation.**

  - There is no reason to prolong the use of inefficient tiers that for the last six years have been a source of significant waste for the TRS Fund. As the Commission recognizes, tiers cost tens-of-millions of dollars per year but have done nothing to incentivize inefficient providers to seek efficiency gains. Rate tiers have simply become a source of corporate welfare for providers unwilling to operate as efficiently as Tier III providers.

  - In a market in which the principal costs are the salaries, benefits and training of VRS interpreters and in which the effects of scale are extremely minimal,[11] it is illogical to continue using rate tiers because scale cannot be expected to be a significant advantage. Moreover, small providers should be encouraged to achieve the minimum necessary scale to be competitive – which will not happen if the Commission prolongs tiers beyond the transition that it has planned. In fact, to make clear that rates will be unified, as Sorenson has previously proposed, the rate reductions for the tier below 500,000 minutes should continue until they reach the same rate as the tier above 500,000 minutes, and then should proceed together.

  - What is more, the continued use of rate tiers is the height of intellectual bankruptcy when used with rate-of-return regulation. When rates of competing companies (small incumbent LECs do not compete with one another) are effectively set (as tiers would do) based on individual company costs, rate tiers give greater compensation to those providers that are the most wasteful and make the worst efficiency investments, rather than the reverse. This is yet another reason that the Commission should abandon any pretense of rate-of-return

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[10] ZVRS et. al. Letter at pg. 5-8.

[11] Katz Declaration ¶ 35.

> regulation for VRS – just as it has done with respect to every other area it regulates.[12]

Sorenson urges the Commission to proceed with its plan to transition from an inefficient tier structure to an efficient unitary rate for VRS. Sorenson believes that the three year phase-down that the Commission is currently considering will finally force inefficient providers to start seeking efficiency gains and will make the VRS market more competitive. As set forth in the Commission's FNPRM on VRS rate reform tiers are inconsistent with the public interest and fail to incentivize all providers towards increased efficiency.

Sincerely,

/s/

John T. Nakahata
Counsel to Sorenson Communications, Inc.

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12 The only area other than VRS that maintains a vestige of rate-of-return regulation is the calculation of ICLS support for non-price cap incumbent local exchange carriers that are not subject to support caps.